

REMARKS

Reconsideration and further prosecution of the above-identified application are respectfully requested in view of the amendments and discussion that follows. Claims 1-32 are pending in the prior application. Claims 1-32 have been rejected under 35 U.S.C. §103(a) as being obvious over U.S. Pat. No. 5,999,964 to Kelly, in view of U.S. Pat. No. 5,479,488 to Lennig et al., U.S. Pat. No. 6,029,124 to Gillick et al. and U.S. Pat. No. 5,475,733 to Eisdorfer et al. After a careful review of the claims, as amended, it has been concluded that the rejections are in error and the rejections are traversed.

Rejections Under 35 U.S.C. §103(a)

With regard to Kelly, the Examiner asserts that

"As per claims 1, 7, 13, 14, 19, 20, 25, Kelly (5999964) teaches an ACD (col. 3 lines 40-50) detecting and routing calls (col. 12 lines 25-55), with optional voice input (col. 5 lines 58-62). Kelly also teaches call distribution based on the language of the call (col. 12 lines 50-55). Kelly does not go into specifics of the call routing based on language." (Office Action of 12/3/03, page 2).

With regard to the Examiner's assertions about Kelly, it would appear that the Examiner is in error with regard to both assertions. For example, the reference to col. 3, lines 40-50 describe methods of providing input to a computer system 100. A person who provides inputs to a computer system 100 would merely be regarded as a system operator. A teaching of a system operator in no way

implicates a customer of an automatic call distributor or any other part of the claimed invention.

With regard to the Examiner's assertion that Kelly teaches call distribution based on the language of the call, it would appear that the Examiner's languages are, in fact, merely computer languages. For example, the only references to languages are to be found at col. 12, lines 55-55; col. 22, lines 40-41; and col. 24, lines 42-46. The first two references (i.e., col. 12, lines 55-55; col. 22, lines 40-41) recite the vague heading "Language Support/Call Routing-CCV support for call routing based upon language requirements". The last reference (col. 24, lines 42-46) clarifies the meaning of the previous headings with the explicitly statement that "A software implementation of the above-identified embodiment may comprise a series of computer instructions . . . Those skilled in the art will appreciate that such computer instructions can be written in a number of programming languages". Since Kelly merely teaches call routing based upon a number of different computer languages and operator audio input to a computer, Kelly is simply irrelevant. In addition, since Kelly is simply drawn to programming languages, there would be incentive to combine Kelly with Lennig et al, since there would be no functionality provided by the combination.

Obviousness is a conclusion of law based on a number of underlying factual inquiries. *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1572 (Fed. Cir. 1988). The basic test for determining obviousness is governed by 35 U.S.C. Section 103 and as set forth by the Supreme Court in the seminal case of *Graham v. John Deere Co.*, 383 U.S. 1 (1966). It is well-settled law that the test for

obviousness is based on three basic factual inquiries. First, the scope and content of the prior art are determined. Second, the differences between the prior art and the claims at issue are ascertained. Third, the level of ordinary skill in the pertinent art is resolved. These are the primary considerations. Against these basic inquiries, the question of obviousness is resolved. Secondary considerations bearing on obviousness are also considered. *Id.* at 17. Secondary considerations are sometimes referred to as the fourth prong of the *Graham* test. *Vandenberg v. Dairy Equipment Co.*, 740 F.2d 1560, 1567 (Fed. Cir. 1984).

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some suggestion or motivation to do so. *Heidelberger Druckmaschinen AG v. Hantscho Commercial Products, Inc.*, 21 F.3d 1068, 1072 (Fed. Cir. 1994). It is not permissible to pick and choose among the individual elements of assorted prior art references to re-create the claimed invention, but rather "some teaching or suggestion in the references to support their use in the particular claimed combination" is needed. *SmithKline Diagnostics, Inc. v. Helena Laboratories Corp.*, 859 F.2d 878, 886-87 (Fed. Cir. 1988). Proper analysis under Section 103 involves considering whether the "prior art would have suggested to those of ordinary skill in the art that they should make the claimed composition or device," and whether the prior art would have "revealed that in so making or carrying out, those of ordinary skill would have a reasonable expectation of success." Both the suggestion and the reasonable expectation of success must be found in the prior art, not in the applicant's disclosure. *In re*

Vaeck, 947 F.2d 488, 493 (Fed. Cir. 1991).

The applicant's comments with regard to Lennig et al., Gillick et al. and Eisendorfer et al. from the previous Responses are repeated as if fully set forth herein. Because of the reasons set forth above and in the previous responses, the combination of Kelly, Lennig et al. and Gillick et al. and Eisendorfer et al. is merely an aggregation of references. The combination is merely an aggregation of references because the only suggestion that would allow their combination in the manner of the claimed invention is in the applicant's specification based on hindsight reconstruction.

In summary, the combination of Kelly, Lennig et al. Gillick et al. and Eisendorf et al. clearly fail to provide any teaching or suggestion of the claimed invention. Since the combination fails to provide any teaching or suggestion of the claimed invention, the rejection is believed to be improper and should be withdrawn.

Closing Remarks

Allowance of claims 1-32, as now presented, is believed to be in order and such action is earnestly solicited. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, he is respectfully requested to telephone applicant's undersigned attorney.

The Commissioner is hereby authorized to charge any additional fee which may be required for this application under 37 C.F.R. §§ 1.16-1.18, including but not limited to the issue fee, or credit any overpayment, to Deposit Account No. 23-0920. Should no proper amount be enclosed herewith, as by a check being in the wrong amount,

unsigned, post-dated, otherwise improper or informal, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 23-0920. A duplicate copy of this sheet(s) is enclosed.

Respectfully submitted,
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